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IN THE

Supreme Court of the United States

October Term, 1964

No. 485

JEROME REHMAN, *Petitioner,*

vs.

PEOPLE OF THE STATE OF CALIFORNIA, *Respondent.*

Brief for Respondent in Opposition to Petition for Writ of Certiorari.

Opinion Below.

It is true, as set forth in the petition, that "there are no written opinions by the courts below". (Pet. p. 1.) However, it should be noted that the reasons which caused the trial court to desire and to accept the condition of bail which petitioner, through his counsel, proposed (the voluntary surrender of his medical license only for the duration of his appeal from the criminal conviction), were set forth by the trial court on numerous occasions. [Rep. Tr. of trial, pp. 21785-21787, 21789, 21793, 21845-21846, 21848-21850, 21866-21867; Ex. C, attached to the application before the District Court of Appeal, pp. 21-22, 24-26, 43, 53-54.][1] These reasons were summarized as follows by the trial court:

[1]The evidence on the basis of which petitioner was convicted and the proceedings which took place after petitioner's conviction are contained in a reporter's transcript of over twenty-one thousand pages in length. The record which petitioner has filed

"At the time of sentencing I commented that there was substantial evidence of Dr. Rehman's lust for money at the expense of human rights and of his indifference to professional obligations, and of his contempt for governmental authorities, and that because of these attitudes and conduct it was my considered opinion that if permitted to be placed on bail he would commit similar acts pend-

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with this court encompasses only twenty-three pages of this reporter's transcript. (Ex. C. attached to the Application before the District Court of Appeal, which application petitioner filed as part of his record in this Court; the last four pages of exhibit C (pp. 51-54) are not contained in the reporter's transcript of the trial.) We contend that the record submitted by petitioner to this court does not fully indicate the evidence underlying the trial court's conclusion that it should accept petitioner's proposal to surrender his license. We have therefore deemed it appropriate to lodge with this court (and have already forwarded to this Court) the entire reporter's transcript of the trial in this case, pursuant to Rule 21(b) of the Rules of this Court.

It should be noted that this trial record was filed with the District Court of Appeal on November 22, 1963. (See certification of the Clerk of the District Court of Appeal.) Thus, this entire record was before the California appellate courts at the time petitioner filed his petitions in the California District Court of Appeal on December 12, 1963 (2d Civ. No. 27952) and on May 7, 1964 (2d Crim. 9534) and in the California Supreme Court on January 14, 1964 (petition for hearing in 2d Civ. No. 27952) and on May 22, 1964 (Crim. 7962, the case to which petitioner now seeks a writ of certiorari—see Appendix A to the printed petition). (See certification of the Clerk of the California District Court of Appeal.) It should also be noted that the briefs filed by the respondent in the California District Court of Appeal and the California Supreme Court relied upon and summarized, in part, the conduct of petitioner as developed at his trial. (Because we believe these briefs are really collateral to the instant proceeding, we have not forwarded them to this Court, but would be glad to do so if the Court deems them of any assistance in deciding this case.)

Reference to this reporter's transcript will be made as follows: Rep. Tr. of trial, with appropriate page reference. Wherever the same pages are encompassed within the record submitted by petitioner, an additional cross-reference to petitioner's record will be made. (See text accompanying this footnote.)

ing appeal; that the safety of the community would be jeopardized. I thereupon indicated my intention to deny bail and remand him to custody." [Rep. Tr. after trial, p. 62.][2]

Jurisdiction.

Petitioner seeks to invoke the jurisdiction of this honorable Court pursuant to 28 U. S. C. 1257(3), and 2101(c), and Rule 22(3) of the rules of this Court.

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[2]After petitioner surrendered his license and was released on bail, petitioner made an application to a single justice of this Court for certain relief, pending ultimate disposition of this matter by the entire Court. This application resulted in an order which "stayed the order of the court below, insofar as it would result in the surrender of petitioner's license to practice medicine in the State of California."

After this order was issued, additional hearings were held in connection with this case which resulted in the revocation of petiltioner's bail. (At the present time, however, the trial court itself has stayed this revocation, pursuant to the agreement of the parties.) A reporter's transcript of these additional hearings has been prepared and Volume 1 of this transcript was previously submitted by the petitioner as part of the documents filed in connection with his Application to a single Justice of this Court. To the best of our knowledge, Volume 1 of this transcript is still retained by the Court as part of its records. The respondent submitted Volume 2 of this reporter's transcript in connection with the opposition that it filed to the Application made to a single Justice of this Court. It is our understanding that this transcript has also been retained by the Court as part of its records.

The respondent desires that these two transcripts be deemed submitted by the respondent as part of its record in this matter, pursuant to Rule 21(6) of the Rules of this Court, because these proceedings further clarify the reasons why the trial court originally permitted petitioner to be released on bail on condition that he voluntarily surrender his license, and because these proceedings make it entirely clear that if petitioner is entitled to retain his license while he is out on bail an additional problem is presented by this case: namely, could the State then revoke bail entirely? This additional problem will be further amplified in this brief, *infra*. These transcripts will be referred to herein as Rep. Tr. after trial, with appropriate page reference.

Questions Presented for Review.

The petitioner contends that (a) the excessive bail, and (b) the cruel and unusual punishment provisions of the Eighth Amendment were violated when the trial court accepted petitioner's offer to voluntarily surrender his state license to engage in the practice of medicine as a condition upon which the trial court permitted petitioner to be released on bail while petitioner's appeal from his conviction is pendng.[3] He also claims this was a violation of the due process clause of the Fourteenth Amendment.

In the event that any of petitioner's contentions are decided in his favor, we believe that an additional issue is then presented by this case: namely, can a state court, if it is unable to release a defendant on bail on the condition that he voluntarily surrender his license only for the duration of his criminal appeal, then revoke bail entirely? We submit that this issue must also be decided in this case, in the event that a ruling adverse to respondent is made in regard

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[3]It is clear, from the record, that had the petitioner not agreed to voluntarily surrender his license, the trial court would have remanded petitioner to the custody of the sheriff, in order that petitioner might serve his sentence while his appeal was pending. [Rep. Tr. of trial pp. 21846-21849; Ex. C. attached to the application before the District Court of Appeal pp. 22-25, 54, lines 15-19.] It is also clear from the record that the trial court doubted it could judicially impose as a condition upon petitioner's bail that the petitioner not engage in the practice of medicine, but rather that such an act must be one which the petitioner must voluntarily put into force by surrendering his license. [Rep. Tr. of trial pp. 21851, 21866-21867; Ex. C. attached to the Application before the District Court of Appeal, pp. 27-28, 43-44, 54.] It was this doubt that led petitioner, through his counsel, to offer to surrender his license. [Rep. Tr. of trial pp. 21853-21856; Ex. C. attached to the Application before the District Court of Appeal, pp. 29-32.] The voluntariness of this surrender of the license is discussed in greater detail *infra*, at p. 19.

to any of petitioner's contentions which are summarized above, because it is abundantly clear that the state court would revoke bail in the event petitioner is entitled to the return of his license, and in fact did revoke bail while these proceedings were pending before a single Justice of this Court. [Rep. Tr. after trial, p. 64.][3a]

Indeed, in connection with the proceedings held before that single justice, the petitioner himself, through his counsel, stated that if the state has a right to revoke bail entirely, then petitioner would rather have the original condition, namely, that he voluntarily surrender his license, remain in effect since he prefers to remain out of jail (even though conditionally) to incarceration. (See the Application to a Single Justice For a Supplemental Order in Connection with Order of August 10, 1964 Re Bail Pending Appeal, pp. 11-12.)

Statement of the Case and Facts.

A. Introduction.

Petitioner states "The facts pertinent to this petition are not in dispute." (Pet. p. 3.) In general, the facts which have been set forth by the petitioner are not disputed, although certain aspects of them are disputed and are summarized in detail below.

However, more important is the fact that petitioner's statement of facts does not indicate the basis upon which the trial court believed that petitioner's release upon bail would be a clear and present danger to society which would jeopardize the safety of the community. It is because of these facts, which are not

[3a]The propriety of revoking bail entirely in the instant case was upheld by Mr. Justice Douglas, as Circuit Justice, in an opinion dated October 7, 1964.

set forth in the petition and not contained in the record submitted by petitioner, that the trial court took the view that it should not release petitioner, unless he voluntarily agreed to surrender his license.

At the time trial court revoked bail in the present matter, it stated, in part, as follows:

"During the 10-month trial of Dr. Rehman we had approximately 23,000 pages of testimony, and I think around 500 exhibits. Evidence was presented indicating that in literally dozens of instances Dr. Rehman performed unnecessary medical treatment and surgery on unsuspecting persons for personal gain. His modus operandi was very simple. First he would ascertain whether or not they had insurance or financial means. If none, they would be turned away, and if they did, then they were admitted, and using the vernacular, he gave them the works and charged what the traffic would bear.

"The evidence further showed that for personal gain he knowingly permitted unqualified and unlicensed personnel to work in his hospital and in his two clinics, and he knowingly failed to maintain accepted medical standards in the operation of his facilities.

"His guilt was determined by a jury after 10 months of trial. I denied a motion for new trial because in my opinion the evidence of guilt was overwhelming.

"At the time of sentencing I commented that there was substantial evidence of Dr. Rehman's lust for money at the expense of human rights

and of his indifference to professional obligations, and of his contempt for governmental authorities, and that because of these attitudes and conduct it was my considered opinion that if permitted to be placed on bail he would commit similar acts pending appeal; that the safety of the community would be jeopardized. I thereupon indicated my intention to deny bail and remand him to custody." [Rep. Tr. after trial, pp. 61-62.]

During the ten-month trial referred to in the quotation above, the People presented witnesses and documentary evidence for approximately six months, including numerous employees of petitioner, to show that petitioner performed unnecessary major surgical procedures, unnecessary diagnostic procedures, and caused unwitting patients to be confined for unnecessary hospitalization, all of which was done for petitioner's own financial gain. Petitioner's guilt was proven to a jury beyond a reasonable doubt.

Petitioner's scheme included preying on innocent victims with minor complaints who had come to petitioner's clinic, which was located near a military housing tract development. Many of these persons were necessarily transient and did not know the reputation of doctors in the area. They were far removed from convenient medical services. Petitioner would send these people and other local residents who came in with minor complaints to his hospital and proceed to run up large medical bills for hospitalization and major surgical and diagnostic procedures which were not necessary or indicated, and which, in fact, were detrimental to those persons' physical well-being. Besides the actual victims of petitioner's fraudulent scheme, additional evi-

dence was adduced at the trial to show that the specific instances proved were not isolated, but, rather, were part of a scheme to defraud the community where petitioner practiced and which proceeded day-in and day-out with petitioner in charge. The evidence referred to events covering more than one year's time. Numerous other investigated cases, indicating un-necessary hospitalization, diagnostic tests, and major surgical procedures, were not presented at the trial because of the time required to properly present them. Even though the trial was limited in scope, it took ten months and is believed to be one of the longest criminal cases in the history of this state, if not the longest.

In the short time available to file this brief, it is obviously physically impossible for us to attempt to summarize the 21,877 pages of testimony and the approximately 500 exhibits which constitute the record in this case, upon which the trial court made its ruling. Furthermore, it should be noted that this case has not as yet been briefed for the state appeal by the State of California, because no opening briefs have as yet been filed on behalf of petitioner and his co-defendants. Consequently, we cannot even submit at this stage of the proceedings a concise, fully-documented summary of the evidence.

However, we shall attempt in this brief to give the Court a small glimmering of a few of the many instances which demonstrated throughout the trial that petitioner's license to practice medicine was used as a license to steal resulting in both financial and physical harm to people in his community, and that if he were permitted to remain in society with his license to practice medicine, there is a reasonable probability that pe-

titioner's extreme greed would once again lead to further harm to society. Our reliance upon these specific instances is not because of a desire that petitioner be punished twice for the same acts—first by being sentenced to state prison, the punishment imposed upon petitioner upon his conviction, and second by being denied the right to practice medicine while his appeal is pending, but rather to show that petitioner's actions demonstrate such a callous indifference to human decency that society must immediately restrict this man's freedom or be subject to further harm.

We hope, by summarizing below a few of the many instances of Dr. Rehman's misconduct, that the Court will not conclude that this is all that the trial showed, for the entire evidence in its totality leads only to one conclusion: To permit petitioner to remain on bail while he is entitled to practice medicine would be "irresponsible judicial action"[4] as found by the trial court. [Rep. Tr. after trial, pp. 64-65.]

B. Partial Summary of Evidence Presented During Trial.

PEGGY VEST

Peggy Vest, age twenty-six, and her husband were told by Dr. Rehman at his clinic that Mrs. Vest had tumors and that he (Dr. Rehman) would have to operate and remove part of her uterus if he found only one tumor and might have to remove her whole interns if he found more than one tumor or a malignancy. Dr. Rehman said he wanted to put her in the hospital in "emergency." She was admitted to petitioner's hospital and was fortunate enough to leave the hospital,

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[4] *Carbo v. United States* (1962), 82 S. Ct. 662, 7 L. ed. 2d 769 (Douglas, J. as Circuit Justice).

against Dr. Rehman's advice, to be examined by an independent physician the next day. [Rep. Tr. of trial, pp. 3180, 3187-3223.] The testimony of that doctor and of three other expert medical witnesses established that she had no tumors and that there was no need for the surgery, and such an operation could endanger her physical well-being and further that petitioner wrote many physical findings on Mrs. Vest's hospital chart that were false. [Rep. Tr. of trial, pp. 13612-13644, 13108-13112, 12402-12412, 12439-12442, 10338-10346.] Petitioner billed the United States government medicare program in excess of $600 for "services rendered." [Rep. Tr. of trial, pp. 3218-3222.]

ROBERT O'BRIEN

Robert O'Brien initially went to Dr. Rehman with the complaint of a bad cold. Rehman, instead of properly treating his patient so as to improve his condition, intentionally prescribed for this patient a drug, with knowledge that the patient was allergic to this drug. As a result of the allergic reaction to this drug, this patient became nauseated, vomited, and his general physical condition deteriorated so as to require extensive medical treatment, all of which results in medical payments accruing to the benefit of Dr. Rehman in excess of $1,000. [Rep. Tr. of trial, pp. 9157-9248, 10563-10600, 14021-14024; Ex. P-136, identified at p. 9170, admitted in evidence at p. 9254.]

HELEN EDWARDS

Helen Edwards went to Dr. Rehman to have him check a shoulder she had injured in an accident. She was not released from the hospital until after petitioner performed unnecessary major abdominal surgery. In

addition, Rehman had many unnecessary X-rays and diagnostic tests taken of different parts of her body, having no relationship whatsoever to her original complaint or injury. All this medical care resulted in the billing of her insurance company for several thousands of dollars of unnecessary treatment. [Rep. Tr. of trial, pp. 7039-7077, 12152-12186, 13790,13794, 13820-13829, 13832-13833; Ex. P-91, identified at p. 7060, admitted in evidence at p. 13819; Ex. P-92, identified at p. 7077, admitted in evidence at p. 12154; Ex. P-196 and P-197, identified and admitted in evidence at p. 14026.]

BONNIE JEAN DODA

Bonnie Jean Doda, age thirty-two, was admitted to Dr. Rehman's hospital upon a diagnosis of acute appendicitis. She received pre-operative narcotic medication and was made ready for surgery. Petitioner then learned that Mrs. Doda and her husband were not financially able to pay his anticipated charge, and thereupon petitioner stated, "Her insurance was no good. She'd have to be shipped to the County." Her husband then had to drive his wife from Rehman's hospital to the County Hospital while his wife was still under the influence of the pre-operative narcotic medication. She was then admitted at the emergency clinic of the County Hospital. [Rep. Tr. of trial, pp. 4008, 7148-7174, 7718-7750, 9980-9983, 14046-14050; Ex. 57, identified at p. 3998, admitted in evidence at p. 14043.]

EVA M. WEBB and VIRGINIA FORANYIC

Eva M. Webb, age twenty-two, and Virginia Foranyic, age twenty-one, went separately to petitioner's clinic with minor complaints and were told that they had,

respectively, a rheumatic-enlarged heart and a "very bad heart," and that both had T.B. scars on their lungs. Mrs. Webb was told by petitioner that he would like to put her in the hospital, but she was able to return home before hospitalization because she told petitioner she needed to attend her young child before returning. After Dr. Rehman took X-rays of Mrs. Foranyic, Dr. Rehman and one of his employees displayed these X-rays to her and, with all three present, she was advised she would have to go to the hospital immediately. Mrs. Foranyic was admitted to petitioner's hospital but left, without being discharged, several hours after her admittance. Neither woman had the heart problems stated or any organic problems with their lungs. [Rep. Tr. of trial, pp. 5989-6022, 6484-6515, 13790-13815; Ex. D-A84, identified at p. 6536, admitted in evidence at p. 6538; Ex. P-186, identified and admitted in evidence at p. 13808; Ex. P-71, identified at p. 6020, admitted in evidence at p. 14191; Ex. D-A75, identified at p. 6074, admitted in evidence at p. 6116; Ex. P-A72, identified at p. 6049, admitted in evidence at p. 13812.]

AGNES CRAIGHEAD

Agnes Craighead went to Dr. Rehman and specifically requested that he give her a shot in her shoulder to temporarily relieve her shoulder pain from Bursitis, because she had an appointment with the doctor of her choice a few hours later. She was intentionally kept by Dr. Rehman in his hospital against her will by virtue of a shot in the hip he gave her causing her to blackout and later by excessive sedation. At lucid intervals, Mrs. Craighead would state to Dr. Rehman her desire to leave the hospital, but Rehman would have

her "blackout" again by giving her additional sedatives. On several occasions, Mr. Craighead also expressed to Dr. Rehman his desire that his wife be released from the hospital, but Rehman deceived the husband by falsely stating to him that his wife desired to stay in the hospital. After her period of incarceration in Dr. Rehman's hospital, Rehman sent a bill for "services rendered" to the Craigheads. [Rep. Tr. of trial, pp. 5838-5860, 5912-5933; Ex. D-A68, identified at p. 5909, admitted in evidence at p. 5910.]

MISCELLANEOUS CONDUCT

Obviously, all of the persons who received unnecessary surgery are burdened with scars of various lengths and descriptions for their lives. Two dramatic examples of this are Darlene Kelley, a young, attractive woman who, prior to her unnecessary hospitalization by Dr. Rehman and to undergoing surgery by Dr. Rehman that was not indicated, was studying to be a strip tease dancer. She is now unable to follow her chosen profession because of Rehman's quest for money, which resulted in a long scar from her pubic area to her navel. A young girl, Nancy Douglas, age twelve, received an unnecessary major surgery (exploratory laparatomy) resulting in a long, ugly scar reaching from her navel to her pubic area. A picture of one of these scars was received in evidence at the trial. [Rep. Tr. of trial, pp. 6292-6327, 8682-8705, 8561-8613, 10338-10342, 11053-11080, 11097-11144, 11960-11994; Ex. P-74, identified at p. 6303, admitted in evidence at p. 11961 Ex. P-76, identified and admitted in evidence at p. 6422; Ex. P-121, identified at p. 8612, admitted in evidence at p. 8766.]

Dr. Rehman allowed chiropractors, nurses' aides, a service station attendant, his mother, and an orderly and other unqualified personnel to perform such acts as delivering of children, administration of anesthesia, prescribing of drugs, suturing skin after major surgical procedures, and drawing of blood at his hospital and clinic, even though these personnel were not permitted by the law of the State of California to engage in such practices and procedures, and were not qualified to perform these acts. [Rep. Tr. of trial, pp. 785-834, 1158-1270, 1703-1741, 1889-1930, 2021-2082, 2174-2223, 3017-3126, 3521-3571, 3966-4019, 4314-4355, 4983-5009, 5163-5254, 12365-12381.]

Numerous children, who were unnecessarily placed in Rehman's hospital and kept there for varying long periods of time, were subjected to, and their parents billed for, unnecessary X-rays of their bodies. Expert testimony established there is much possible future harm to their offspring from this improper practice. [Rep. Tr. of trial, pp. 3930, 3990, 3995, 4018-4019, 10720-10753, 11836-11863, 11899-11936, 13007-13041, 13790-13794, 13820, 13832-13833, 13859-13860, 13864, 13867, 13870, 13907; Ex. P-141, admitted in evidence at p. 10727; Ex. P-144, identified at p. 9730, admitted in evidence at p. 9732; Ex. P-156, identified at p. 11830, admitted in evidence at p. 11836; Ex. P-158, identified and admitted in evidence at p. 11903; Ex. P-170, identified and admitted in evidence at p. 12982; Ex. P-171, identified and admitted in evidence at p. 12983; Ex. P-191, identified and admitted in evidence at p. 14024.]

C. Evidence of Petitioner's Callous Indifference to Human Decency and His Utter Contempt for Government and the Laws of Society.

Not only does the conduct of the petitioner, for which he was ultimately convicted by a jury, constitute competent evidence from which an inference can be drawn that petitioner will continue to prey upon society in such a manner as to cause both monetary and physical damage to the members of society, as exemplified by the cases set forth above, but his entire attitude toward his fellow man, toward government, and toward the rule of law is further evidence that, if given the right to remain on bail and practice medicine, petitioner will continue in the very same wrongful conduct for which he was recently convicted. Petitioner's utter disregard for decency and his utter contempt of government and the officers of the government cannot help but compel one to conclude that the only safe control which can be placed upon petitioner while on bail is the revocation of his right to practice medicine.

Throughout the proceedings held in connection with this case, the trial court expressed a concern as to petitioner's probable conduct because of petitioner's attitude. Thus, the trial court stated the following as one of the reasons for its remanding petitioner to the custody of the Sheriff after the jury found petitioner guilty as charged:

> "Another thing I was concerned about was the fact that the doctor has had, according to the evidence in this case and also from information that has come to me from other sources, very little respect for law and order even as late as last Tuesday. I am advised that the Internal Revenue

office posted a notice on the clinic door at the Avalon Clinic. The doctor immediately tore the notice down. That is just illustrative of his attitude toward law and order. He seems to lack not only the comprehension as to what a good citizen should do, but also he feels he can go on his own way regardless of the rules and regulations that govern the rest of us. That attitude has caused me some concern." [Rep. Tr. of trial, p. 21787.]

After the trial was concluded, the court stated as follows with regard to petitioner's conduct during the trial:

"It is hearsay, but repeated complaints of incidents in the corridors of this courthouse were reported to me by my bailiff and other individuals who overheard those remarks, and then of course our testimony gave numerous instances of individuals that had been called various hours of the night. It seemed like it was the practice of the doctor to call people at two or three or 4:00 o'clock in the morning and hold them on the phone for a half-hour or so, things of that kind." [Rep. Tr. of trial, pp. 21795-21796.]

At the time the trial court denied petitioner probation, it stated, in part, as follows:

"Because of the seriousness of this offense and your complete disregard for the rights of others and the ethics of the medical profession, I feel and also I might say because of your attitude, not only throughout the trial, but as I get it, your present attitude—I refer specifically to your dealings with the Probation Officer—I feel that a

probationary program would not be of any value to you, so the application for probation is denied." [Rep. Tr. of trial, p. 21846.]

Finally, at the time the trial court decided to revoke bail in this matter, the trial court stated as follows:

> "At the time of sentencing I commented that there was substantial evidence of Dr. Rehman's lust for money at the expense of human rights and of his indifference to professional obligations, and of his contempt for governmental authorities, and that because of these attitudes and conduct it was my considered opinion that if permitted to be placed on bail he would commit similar acts pending appeal; that the safety of the community would be jeopardized." [Rep. Tr. after trial p. 62.]

Perhaps the height of petitioner's arrogant disregard for propriety consists of newly discovered evidence which came to light after the trial court revoked bail on September 4, 1964, in the instant matter. On or about September 8, 1964, the office of the District Attorney learned, for the first time, that petitioner had stated on August 3, 1964, August 6, 1964, and August 10, 1964, that he had paid a sum of money to his attorney for the alleged purpose of bribing a Justice of the United States Supreme Court. A transcript of the evidence relating to this matter has been filed with this court,[5] and we would not endeavor to dignify this

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[5]This transcript is Volume 2 of the reporter's transcript. See Footnote 2, *supra*.

The petitioner herein attacked the propriety of holding the hearing which resulted in Volume 2 of the reporter's transcript. As far as we can determine, there appears to be no specific rule governing the manner in which newly discovered evidence (evidence discovered after the court below has ruled

conduct of petitioner by commenting thereon, except in the following respect: We deem it, indeed, unfortunate that we must present evidence relating to a matter the truth of which we do not believe, *i.e.*, we do not believe the substance of Dr. Rehman's statements; and the sole purpose for which this evidence was offered, as is indicated by Volume 2 of the transcript, pages 74-76, 118-119, 176, was to establish that Dr. Rehman did, in fact, make these statements.

However reluctant we may be to present this matter, we feel that it is necessary to do so, in order that petitioner's true state of mind may be made clear. Petitioner's future conduct will be determined, in part,

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and discovered while the matter is pending in the United States Supreme Court) shall be submitted to the United States Supreme Court. It appears that in the past such evidence has been presented by means of affidavits (see *United States v. Shotwell Manufacturing Company* (1957), 355 U. S. 233, 2 L. ed. 2d 234, 78 S. Ct. 245) or by means of oral testimony taken in proceedings collateral to the case upon which certiorari was requested (see *Mesarosh v. United States* (1956), 352 U. S. 1, 1 L. ed 2d 1 77 S. Ct. 1). (See also the dissent in *Beck v. United States*, 11 L. ed 2d 419. 84 S. Ct. 480.) In those cases the Court then remanded the matter to the court below for further proceedings. However, it should be noted that one of the purposes of holding this hearing in the court below was to have some proceedings upon which the single Justice of this Court could act promptly, since time was obviously of the essence in the instant matter. Indeed, the trial court, while fully recognizing petitioner's objection to the jurisdiction to hold these proceedings, suggested as follows to petitioner's counsel:

> "I just wonder if you couldn't, if you wanted to call a witness, call him without prejudice to urging that point [lack of jurisdiction] in the Appellate Court. It is up to you, whatever you want to do. I am not telling you how to run your case." [Rep. Tr. after trial p. 167.]

To this petitioner's counsel answered:

> "Your Honor, our whole free society is based on the doctrine of freedom of choice, and in that regard I would like, as an advocate, representing Dr. Rehman, to exercise the choice of not offering in this tribunal any evidence at this time." [Rep. Tr. after trial, p. 167.]

by his state of mind. His state of mind must, therefore, be probed, and the only feasible way that this can be done is by considering objective actions that petitioner has taken, in order to understand his subjective beliefs and motives. After all, it must be remembered that it was not the State of California that propagated such vicious and untruthful statements, but, rather, the petitioner himself. We offer this evidence not to bias or prejudice anyone other than petitioner, for we feel that this evidence shows petitioner's true state of mind and his true attitude towards a government of law.

D. Facts Relevant to Voluntary Surrender by Petitioner of His License to Practice Medicine.

The petitioner, in his petition, appears to attach some significance to the fact that petitioner's then counsel stated in an affidavit that the trial court advised this attorney "that he [the trial court] would release petitioner from custody only if he, petitioner, agreed not to practice medicine pending the probation report". (Pet. p. 4.) We submit that even assuming this fact to be true, the petitioner was released on bail pending appeal on a condition entirely different from the condition upon which he was released pending the hearing on the probation report. Pending the hearing on the probation report, the petitioner was released on his, petitioner's, representation that he personally agreed not to practice medicine pending the hearing on the probation report. [Rep. Tr. of trial pp. 21797-21799.]

However, at the time the court imposed sentence and denied bail, the court at first remanded the petitioner to the custody of the sheriff to be delivered to the

state prison for the term prescribed by law. [Rep. Tr. of trial, pp. 21846-21849; Ex. C. attached to the Application before the District Court of Appeal, pp. 22-25.] Thereafter, petitioner's trial counsel suggested that the court "set an appeal bond and condition it upon the fact that he (petitioner) doesn't engage in the practite of medicine". [Rep. Tr. of trial, p. 21849; Ex. C, attached to the Application before the District Court of Appeal, p. 25.] The court then stated, "I am not even satisfied in my own mind that the condition would be a valid condition so that if broken, I would have jurisdiction to remand the defendant to custody." [Rep. Tr. of trial, p. 21851; Ex. C, attached to the Application before the District Court of Appeal, p. 27.] After some further discussion, petitioner's trial counsel then said:

> "Your Honor, if I remember correctly, with these licensed professions of the state, there is one way that a person can no longer be licensed. I think that includes lawyers. That would be if he turned in his license to the Licensing Board and asked that that license be placed in suspension pending a certain proceeding." [Rep. Tr. of trial, pp. 21853-21854; Ex. C, attached to the Application before the District Court of Appeal, p. 30.]

Then the following colloquy took place:

> "The Court: Why don't I retain jurisdiction of this matter for a few days, and you gentlemen contact the Osteopathic Board and see what can be done?
>
> "Mr. Ramsey (Petitioner's trial counsel): May we have a stay, then, for a week? Monday is a

holiday and we won't be able to do anything until Tuesday on this thing.

"The Court: As I read this 2361, it is going to require a hearing by the Osteopathic Board; however, it might be that with Dr. Rehman's consent, they could suspend his license.

"Mr. Ramsey: That is my feeling that he could turn it in and ask it be suspended, pending the outcome of this case.

"The Court: I see no objection to that, do you, Mr. Marin?

"Mr. Marin (Deputy District Attorney): No, your Honor." [Rep. Tr. of trial, p. 21854, Ex. C, attached to the application before the District Court of Appeal, pp. 30-31.]

At the next hearing on this matter, petitioner's trial attorney submitted a statement signed by petitioner to the effect that petitioner was freely and voluntarily surrendering his license to practice medicine to continue to the final determination of his appeal. [Rep. Tr. of trial pp. 21864-21865, Ex. C, attached to the application before the District Court of Appeal, p. 41, and Petition for Writ of Certiorari, p. 5.] The court then went to great pains to ascertain that this was freely and voluntarily agreed to by petitioner, and concluded that it was. [Rep. Tr. of trial pp. 21867-21868, Ex. C, attached to the application before the District Court of Appeal, pp. 43-46.]

ARGUMENT.

I.

There Is No Substantial Federal Question Presented by This Petition.

A. A Licensee Has No Constitutional Right to Keep His License While Out on Bail After He Is Convicted of a Felony.

Petitioner attempts to convey the impression in his petition that the federal questions presented for review in this case arise out of a context wherein "his state license to practice is in good standing and has not been revoked or suspended by the state authorities charged with the authority for that function." (Pet. p. 2.) We submit, however, that this is a misstatement of the present posture of the case and is a misinterpretation of the legal effect of the prior proceedings held in this case. Specifically, as we shall endeavor to prove below, petitioner's license has been voluntarily and temporarily[6] suspended by petitioner himself, and such suspension has been accepted by a state court "charged with the authority for that function."

To begin with, let us clear away some of the underbrush. There can be no doubt that state administrative boards have the power to revoke or suspend licenses, and, in fact, such power is given to a state administrative board in regard to the suspension or revocation of petitioner's license, under California Business and Professions Code, section 2360. The power for this board to revoke or suspend petitioner's license upon his conviction of a felony in the instant case cannot be doubted any more than that this Court, as well

[6]Petitioner's surrender of his license remains in effect only until the ultimate disposition of his appeal.

as the California courts, has the power to revoke and suspend licenses upon convictions of felonies. (See Rule 7 of the Rules of the United States Supreme Court and California Business and Professions Code, section 6102; the latter makes it mandatory for an attorney to be suspended pending the ultimate disposition of any appeal from his felony conviction if there is probable cause to believe that the felony for which the attorney was convicted involved moral turpitude.)

However, the fact that an administrative board did not revoke or suspend petitioner's license does not mean that a court is not empowered to bring into effect the same result when such result is necessary for the safety of the public and is voluntarily offered by the petitioner. (We shall discuss the ample evidence which supports the conclusion that the suspension of the license in the instant case was necessary for the safety of the public in Part II of this brief, *infra*, and shall discuss the voluntariness of this surrender in Part III of this brief.) Thus, for example, in California, the courts, as well as administrative boards, are authorized to suspend a driver's license upon the conviction of certain specified offenses. (See California Vehicle Code, sections 13201 and 13202.) By affirming the action of the trial court in accepting the voluntary suspension of petitioner's license in the instant case, the California appellate courts have, in essence, indicated that it is proper for a court to bring into effect a suspension of a license to practice medicine and that the power to effect such a suspension is not limited to any administrative board. Consequently, petitioner cannot now urge that his license has been suspended by a state authority which is not "charged with the authority for that function." (Pet. p. 2.)

This being the case, how can it be said that the mere fact that such suspension was effected by a court creates a federal question when it is certainly true that the suspension of this license by the California administrative board would not have created a federal question absent some violation of *procedural* due process? In other words, petitioner's claim in the instant case is that the State court was prohibited by the federal constitution from suspending his license. What he claims is an alleged denial of *substantive* due process. Petitioner makes no claim that the procedure which resulted in the surrender of his license was violative of due process because he was denied adequate notice or denied an adequate hearing. If an administrative board has the right to suspend the license, we submit that the question of whether or not a state court has the right to suspend the license is a question of state and not federal law.

The significance of this should not be overlooked. Although petitioner still is licensed as an osteopath and this license has not been revoked or suspended by the appropriate state board, the California courts by virtue of the decision herein, have in essence ruled that the same result may be reached by means of judicial action, and that the licensing of a doctor is not solely within the jurisdiction of an administrative board. Indeed, as noted above, California has statutes which expressly so provide in other comparable situations. In the instant case, although there is no statute expressly providing for revocation or suspension by a trial court, the California courts have, in essence, held that they have the inherent power to supervise the licensing of a doctor, just as an administrative board

would have that right. This, we maintain, does not rise to the dignity of a federal question.

B. A Defendant Has No Constitutional Right to Bail After a Felony Conviction, Even if There Is No Likelihood of His Flight Pending Appeal.

In the event that this court concludes that a substantial federal question is presented by this case insofar as it relates to the suspension of the petitioner's license pending his appeal, we then urge that an additional question must be considered by this court which we contend, under the facts of this case, does not rise to the dignity of a substantial federal question: namely, even if the trial court could not constitutionally release petitioner on bail on the condition that he voluntarily surrender his license, did it have the constitutional right to revoke bail entirely? It is clear from the proceedings which took place while this case was pending before a single Justice of this Court that the trial court would revoke bail entirely in the event that this Court rules it is without power to release the defendant conditionally on bail. Therefore, this additional issue must be considered and decided by this Court in the event the instant proceeding is to be remanded to the state court.

It is our contention that the trial court is constitutionally empowered to revoke bail under the circumstances of this case and therefore this case does not present a substantial federal question. The petitioner contends that a state court has no right to impose a condition on bail which is not related to the purpose of securing the petitioner's attendance at court when needed. (Pet. pp. 8-10.) We shall argue the validity of attaching conditions which are not related to attendance at court in Part II, *infra*. However, we do

urge that, if bail can be denied entirely for reasons which have no relationship to a defendant's attendance at court, then certainly conditions can be attached to bail which have no relationship to his attendance. We shall consider therefore, under this part of our argument, our contention that bail may be denied entirely when the reason for denying such bail has no relationship whatsoever to the defendant's attendance at court.

California Penal Code, section 1272, subdivision 3, permits a trial court discretionary power in granting or denying bail. Such discretion, however, is not absolute and is limited by the rules announced in *In re Brumback* (1956), 46 Cal. 2d 810, and *In re Skaggs* (1956), 47 Cal. 2d 416. Those two cases make it clear that bail may have purposes other than to assure the presence of the defendant in court.

We contend that a similar rule prevails in the federal courts and that bail in the federal courts may be denied for a reason other than one relating to the defendant's appearance in court. See, for example, *Carbo v. United States* (1962), 7 L. ed. 2d 769, 82 S. Ct. 662 (Mr. Justice Douglas, as circuit Justice), wherein it was stated, "Yet the risk of the applicant using release on bail as the occasion to escape does not, in my view, exhaust the conditions that may warrant denial of bail." (7 L. ed. 2d at 773, 82 S. Ct. at 666.) See, also, *Esters v. United States* (1958), 255 F. 2d 63; *United States v. Allied Stevedoring Corporation* (1956), 143 F. Supp. 947, affirmed in 235 F. 2d 909; and *United States v. Piper* (1964), 227 F. Supp. 735; which sets forth eleven different considerations which the courts have relied upon in ascertaining whether or not bail should be denied pending appeal.

In the present case there is a reason totally unrelated to appearance in court upon which the trial court could properly deny bail: There was substantial evidence relating to defendant's conduct and "attitude toward legal process"[6] which made it reasonably probable that, if permitted to remain on bail while at the same time permitted to practice medicine, defendant would be a clear and present danger to the health and safety of the community because he would engage in the very same type of conduct for which he has been recently convicted. We have summarized this evidence in Parts B and C of our Statement of the Case and Facts, *supra*, and shall set forth the legal conclusions to be drawn from this evidence in Part II of our argument, *infra*. However, it is our contention that, if defendant has a constitutional right while out on bail to practice medicine, "it would be irresponsible judicial action to grant bail" (*Carbo v. United States* (1962), 82 S. Ct. 662, 666, 7 L. ed 2d 769, 774 (Mr. Justice Douglas, as circuit Justice).

Furthermore, we contend that the following principle is applicable to the instant case:

> "It [bail] is to be denied only in cases in which, from substantial evidence, it seems clear that the right to bail may be abused or the community may be threatened by the applicant's release." *Leigh v. United States* (1962), 82 S. Ct. 994, 996, 8 L. ed. 2d 209, 271; Chief Justice Warren, as circuit Justice.)

These cases cited above afford ample precedent for denying bail entirely.

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[6] *United States v. Piper* (1964), 227 F. Supp. at 740.

II.

The Petitioner Is a Clear and Present Danger to Society Whose Release on Bail at the Present Time Will Jeopardize the Safety of the Community.

If bail can be denied entirely, we feel certain that it can be granted conditionally if the condition relates solely to a valid reason for denying bail entirely and now in turn to this issue. It is clear from the record in the instant case, a portion of which was quoted in Part A of our Statement of the Case and Facts, *supra*, pages 5-9 that the trial court desired that petitioner's release on bail be on condition that he voluntarily surrender his license because the trial court concluded that in light of petitioner's previous conduct and his attitude toward society it was reasonably probable that, if petitioner was permitted to remain free on bail and at the same time practice medicine, petitioner's callous indifference to human decency would necessarily lead to further harm to society. We believe that the evidence summarized in Parts B and C of our Statement of the Case and Facts shows that petitioner believes himself to be above all law and subject to no restrictions whatsoever. Petitioner, motivated by an extreme greed, has a compelling desire to obtain whatever he, petitioner, feels he wants regardless of the consequences to society. How can it be said that there is no evidence that such a man as petitioner would in any way be deterred by his obligation to his profession, to his society, and to his government from continuing his unlawful practice of medicine, if released on bail and permitted to practice medicine at the same time?

Thus, we contend that the condition of bail offered by petitioner and accepted by the trial court relates solely to a valid reason for denying bail entirely and is therefore constitutionally permissible.

III.

Petitioner's Voluntary Surrender of His License Was the Result of a Knowing and Intelligent Waiver of Whatever Constitutional Right He May Have Had to Keep That License While His Appeal Is Pending.

In the instant case the act of which the petitioner complains is his own surrender of his license, that is, is his own act rather than the act of any court. The record in this case makes it abundantly clear that the petitioner is seeking to take advantage of acts which, he himself, through his counsel, invited. It appears from the summary of facts contained in Part D of the Statement of the Case and Facts, *supra*, that this invitation was not a mere tacit or casual one, but involved the most emphatic urging by his attorney. This summary further shows that petitioner was not unlawfully coerced into volunteering to surrender his license.

We submit that, merely because there has been a change of heart by the petitioner or, perhaps, because there has been a change of attorney, there should be no change in the validity of the voluntary act which the court below accepted. Petitioner, at the time he surrendered his license, was represented by an attorney and there was no claim at that time by that attorney that the surrender was in any way a violation of any constitutional right that petitioner might have. Indeed, there has never a claim in any court in this case that

the attorney who represented petitioner at the time he surrendered his license was so incompetent as to have caused petitioner to unknowingly and unintelligently waive a right to which petitioner was constitutionally entitled. It must be assumed that petitioner, when represented by this attorney, was fully aware of his constitutional rights and by voluntarily surrendering his license desired to give up any constitutional right he might have in the retention of that license.

Indeed, had petitioner failed to give up that license, he would have been incarcerated immediately, and if he felt that such incarceration would have been improper he could have contested the validity of such incarceration. However, he chose to remain free on bail and he should not now be permitted to have gained the benefit of his choice while, at the same time, disavowing the restrictions of his choice. Petitioner had a clear choice. As a consequence of that choice he has remained out on bail during these entire proceedings and has not been incarcerated.

The mere fact that this choice was made under threat of confinement does not mean the choice was coerced. Since petitioner had no constitutional right to bail (see argument, Part I, B, *supra*, pp. 25-27), the choice offered petitioner was constitutionally permissible.

We therefore urge that petitioner is not in any position to disavow a condition which he voluntarily offered, accepted, and obtained the benefit of with full knowledge of his rights.

Conclusion.

We agree with petitioner that "bail pending appeal is an important part of the administration of justice." (Pet. p. 13.) We submit that in the instant case the State of California, rather than denying bail to the petitioner, which it had every right to do, permitted him to obtain the advantage of bail while, at the same time, adequately protecting society from a convicted felon who already has caused substantial damage to an unknowing and unsuspecting public.

Respectfully submitted,

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